

COMMITTEE SUBSTITUTE

FOR

H. B. 4256

(BY DELEGATES PERRY, ASHLEY, WALTERS AND HALL)

(Originating in the Committee on the Judiciary)
[February 24, 2012]

A BILL to amend and reenact §33-31-2 of the Code of West Virginia, 1931, as amended, relating to captive insurance; limiting risk retention groups' risks on single subjects of insurance; and requiring captive insurance companies to notify the insurance commissioner of any material changes to certain information.

Be it enacted by the Legislature of West Virginia:

That §33-31-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-2. Licensing; authority.

- 1 (a) Any captive insurance company, when permitted by
- 2 its articles of association, charter or other organizational

3 document, may apply to the commissioner for a license to do
4 any and all insurance comprised in section ten, article one of
5 this chapter: *Provided*, That all captive insurance companies,
6 except pure captive insurance companies, shall maintain their
7 principal office and principal place of business in this state:
8 *Provided, however*, That:

9 (1) No pure captive insurance company may insure any
10 risks other than those of its parent and affiliated companies or
11 controlled unaffiliated business;

12 (2) No association captive insurance company may insure
13 any risks other than those of the member organizations of its
14 association, and their affiliated companies;

15 (3) No industrial insured captive insurance company may
16 insure any risks other than those of the industrial insureds
17 that comprise the industrial insured group, and their affiliated
18 companies;

19 (4) No risk retention group may insure any risks other
20 than those of its members and owners;

21 (5) No captive insurance company may provide personal
22 motor vehicle or homeowner's insurance coverage or any
23 component thereof;

24 (6) No captive insurance company may accept or cede
25 reinsurance except as provided in section eleven of this article;

26 (7) No risk retention group may retain any risk on any
27 one subject of insurance, whether located or to be performed
28 in West Virginia or elsewhere, in an amount exceeding ten
29 percent of the surplus required by section four of this article,
30 unless approved by the commissioner;

31 ~~(7)~~ (8) Any captive insurance company may provide
32 excess workers' compensation insurance to its parent and
33 affiliated companies, unless prohibited by the federal law or
34 laws of the state having jurisdiction over the transaction.
35 Any captive insurance company, unless prohibited by federal
36 law, may reinsure workers' compensation of a qualified
37 self-insured plan of its parent and affiliated companies; and

38 ~~(8)~~ (9) Any captive insurance company which insures
39 risks described in subsections (a) and (b) of section ten,

40 article one of this chapter shall comply with all applicable
41 state and federal laws.

42 (b) No captive insurance company may do any insurance
43 business in this state unless:

44 (1) It first obtains from the commissioner a license
45 authorizing it to do insurance business in this state;

46 (2) Its board of directors, or, in the case of a reciprocal
47 insurer, its subscribers' advisory committee, holds at least one
48 meeting each year in this state; and

49 (3) It appoints a registered agent to accept service of
50 process and to otherwise act on its behalf in this state:

51 *Provided*, That whenever such registered agent cannot with
52 reasonable diligence be found at the registered office of the
53 captive insurance company, the Secretary of State shall be an
54 agent of such captive insurance company upon whom any
55 process, notice, or demand may be served.

56 (c)(1) Before receiving a license, a captive insurance
57 company shall:

58 (A) File with the commissioner a certified copy of its
59 organizational documents, a statement under oath of its
60 president and secretary showing its financial condition, and
61 any other statements or documents required by the
62 commissioner; and

63 (B) Submit to the commissioner for approval a
64 description of the coverages, deductibles, coverage limits and
65 rates, together with such additional information as the
66 commissioner may reasonably require. In the event of any
67 subsequent material change in any item in such description,
68 the captive insurance company shall submit to the
69 commissioner for approval an appropriate revision and shall
70 not offer any additional kinds of insurance until a revision of
71 such description is approved by the commissioner. The
72 captive insurance company shall inform the commissioner of
73 any material change in rates within thirty days of the
74 adoption of such change.

75 (2) Each applicant captive insurance company shall also
76 file with the commissioner evidence of the following:

77 (A) The amount and liquidity of its assets relative to the
78 risks to be assumed;

79 (B) The adequacy of the expertise, experience and
80 character of the person or persons who will manage it;

81 (C) The overall soundness of its plan of operation;

82 (D) The adequacy of the loss prevention programs of its
83 insureds; and

84 (E) Such other factors deemed relevant by the
85 commissioner in ascertaining whether the proposed captive
86 insurance company will be able to meet its policy obligations.

87 (3) Information submitted pursuant to this subsection
88 shall be and remain confidential and may not be made public
89 by the commissioner or an employee or agent of the
90 commissioner without the written consent of the company,
91 except that:

92 (A) Such information may be discoverable by a party in a
93 civil action or contested case to which the captive insurance
94 company that submitted such information is a party, upon a
95 showing by the party seeking to discover such information that:

96 (i) The information sought is relevant to and necessary
97 for the furtherance of such action or case;

98 (ii) The information sought is unavailable from other
99 nonconfidential sources; and

100 (iii) A subpoena issued by a judicial or administrative
101 officer of competent jurisdiction has been submitted to the
102 commissioner: *Provided*, That the provisions of subdivision
103 (3) of this subsection shall not apply to any risk retention
104 group; and

105 (B) The commissioner may, in the commissioner's
106 discretion, disclose such information to a public officer
107 having jurisdiction over the regulation of insurance in another
108 state, if:

109 (i) The public official shall agree in writing to maintain
110 the confidentiality of such information; and

111 (ii) The laws of the state in which such public official
112 serves require such information to be and to remain
113 confidential.

114 (d) Each captive insurance company shall pay to the
115 commissioner a nonrefundable fee of \$200 for examining,
116 investigating and processing its application for license, and
117 the commissioner is authorized to retain legal, financial and
118 examination services from outside the department, the
119 reasonable cost of which may be charged against the
120 applicant. The provisions of subsection (r) , section nine,
121 article two of this chapter shall apply to examinations,
122 investigations and processing conducted under the authority
123 of this section. In addition, each captive insurance company
124 shall pay a license fee for the year of registration and a
125 renewal fee for each year thereafter of \$300.

126 (e) If the commissioner is satisfied that the documents
127 and statements that such captive insurance company has filed
128 comply with the provisions of this article, the commissioner
129 may grant a license authorizing it to do insurance business in
130 this state until May 31, thereafter, which license may be
131 renewed.

132 (f) A captive insurance company shall notify the
133 commissioner in writing within thirty days of becoming
134 aware of any material change in information previously
135 submitted to the commissioner, including information
136 submitted in or with the license application.